

SEP 12 2010

WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGSGOVERNMENT COMPLIANCE
& ENFORCEMENT

In the matter of:

Bobie R. Hodges,

Respondent/Licensee.

Docket No. 06-2018-GMB-00057

**INITIAL ORDER GRANTING
SUMMARY JUDGMENT MOTION**Agency: Gambling Commission
Program: Washington State Gambling
Commission
Agency No. 2018-00401**1. ISSUES**

- 1.1. Whether a genuine dispute of material fact exists as to whether the Respondent, Bobie R. Hodges, is 'subject to current prosecution or pending charges' for three crimes involving 'physical harm', in violation of RCW 9.46.075(9)?
- 1.2. Whether an genuine dispute of material fact exists as to whether the Respondent, Bobie R. Hodges, failed to report to the Washington State Gambling Commission, in writing, within thirty days of May 18, 2017, that he had been charged with three criminal charges, in violation of WAC 230-06-085(1) and WAC 230-03-085(8)?
- 1.3. If the Washington State Gambling Commission proves the allegations as asserted, whether, as a matter of law, the Respondent, Bobie R. Hodges' Public Card Room Employee license should be revoked, in accordance with RCW 9.46.075(1), (8), and (9) and WAC 230-03-085(1), (7), and (8)(a) and WAC 230-06-085(1)?

2. ORDER SUMMARY

- 2.1. No genuine dispute of material fact exists as to whether the Respondent, Bobie R. Hodges, is 'subject to current prosecution or pending charges' for three crimes involving 'physical harm', in violation of RCW 9.46.075(9). Since the Respondent has raised no genuine dispute of material fact, the Washington State Gambling Commission Board Staff is entitled to Summary Judgment as a matter of law. The Washington State Gambling Commission Staff's Motion for Summary Judgment is **GRANTED**.
- 2.2. No genuine dispute of material fact exists establishing the Respondent, Bobie R. Hodges, failed to report to the Washington State Gambling Commission, in writing, within thirty days of May 18, 2017, that he had been charged with three criminal charges, in violation of WAC 230-06-085(1) and WAC 230-03085(8). Since the Respondent has raised no genuine dispute of material fact, the Washington State Gambling Commission Board Staff is entitled to Summary Judgment as a matter of

law. The Washington State Gambling Commission Board Staff's Motion for Summary Judgment is **GRANTED**.

2.3. Since the Respondent has established no genuine dispute of material fact, the Washington State Gambling Commission Board Staff's allegations are established. Therefore, as a matter of law consistent with RCW 9.46.075(1), (8), and (9) and WAC 230-03-085(1),(7), and (8)(a) and WAC 230-06-085(1), the Respondent, Bobie R. Hodges' Public Card Room Employee License is **REVOKED**.

3. SUMMARY JUDGMENT MOTION HEARING

- 3.1. Oral Argument Date: The Washington State Gambling Commission Board Staff's Motion for Summary Judgment decided without oral argument
- 3.2. Administrative Law Judge: TJ Martin
- 3.3. Respondent/Licensee: Bobie R. Hodges ('Respondent'/'Licensee')
- 3.3.1. Representative: The Respondent/Licensee represented himself.
- 3.4. Agency: Gambling Commission Board Staff ('Board Staff')
- 3.4.1. Representative: Gregory J. Rosen, Senior Counsel
- 3.5. Documents Considered: The undersigned administrative law judge considered the following documents:

Doc. No.	Document Name	Document Date	No. Pages
1	Washington State Gambling Commission's 'Summary Suspension Order' and 'Notice of Administrative Charges'	03/28/2018	6
2	Respondent's 'Request For Stay And Administrative Hearing And Interpreter Form'	04/06/2018	3
3	Office of Administrative Hearings' 'Prehearing Conference Order' and 'Notice of Hearing'	07/10/2018	11
4	Washington State Gambling Commission Staff's 'Motion For Summary Judgment and Memorandum Of Authorities In Support' (with attached Exhibits 1-12) and 'Declaration of Julie Sullivan'	07/19/2018	64
5	Office of Administrative Hearings' 'Status Conference Order Establishing Briefing Schedule on Gambling Commission Board Staff's Summary Judgment Motion'	08/09/2018	3

4. FACTS FOR PURPOSE OF SUMMARY JUDGMENT

On a motion for summary judgment, the decision maker only considers those facts for which the parties establish “no genuine issue as to any material fact”.¹ “Summary judgment is appropriate only where the undisputed facts entitle the moving party to judgment as a matter of law.”² Only evidence in the record and inferences from that evidence establish facts. If evidence in the record points to more than one possible finding of fact, then summary judgment may not rest on the moving party’s version of that fact.³ Admissions, stipulations, procedural history, and uncontested declarations and affidavits establish facts for summary judgment. Therefore, the record here supports the following facts for the purposes of summary judgment:

Jurisdiction

- 4.1. On March 28, 2018, Washington State Gambling Commission issued ‘Notice of Administrative Charges’ and ‘Summary Suspension Order’ against Bobie R. Hodges. The ‘Notice of Administrative Charges’ alleged Mr. Hodges failed to disclose and/or report, in writing, in 2017, to the Gambling Commission being charged with three crimes involving physical harm in the State of Oregon. Based on Mr. Hodges’ failure to disclose these criminal charges and any subsequent prosecution for those crimes, his Public Card Room Employee License should be revoked.
- 4.2. On April 6, 2018, the Respondent/Licensee, Bobie R. Hodges, requested an administrative hearing regarding the Gambling Commission’s ‘Notice of Administrative Charges’.

Summary Judgment

- 4.3. On July 20, 2018, the Washington State Gambling Commission Board Staff filed ‘Commission Staff’s Motion For Summary Judgment and Memorandum of Authorities in Support’, with 12 exhibits and the ‘Declaration of Julie Sullivan’.
- 4.4. The Respondent did not file a Response to the Gambling Commission Board Staff’s motion for summary judgment.

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¹ WAC 10-08-135. In Superior Court matters, CR 56 governs summary judgment. Where the relevant procedural rules do not conflict with CR 56, it and the cases interpreting it serve as persuasive authority in the management of summary judgment under WAC 10-08-135.

² *Verizon NW, Inc. v. Employment Sec. Dep’t*, 164 Wn.2d 909, 916 (2008), citing *Alpine Lakes Prot. Soc’y v. Dep’t of Natural Res.*, 102 Wn. App. 1, 14 (1999).

³ *Verizon NW*, 164 Wn.2d 916.

Respondent's Failure to Disclose and/or Report Being Criminally Charged and Any Subsequent Prosecution for Crimes Involving Physical Harm

- 4.5. Bobie R. Hodges is licensed in the State of Washington as a Public Card Room Employee (License Number 68-31624). *Declaration of Julie Sullivan (hereafter 'Dec. of Sullivan'); Page ('Pg.') 1; Line ('Ln') 20-21.*
- 4.6. The Respondent has been licensed as a Public Card Room Employee since 2013. He does not have any previous administrative case history. *Dec. of Sullivan: Pg. 2; Ln. 15-17.*
- 4.7. On May 18, 2017, the Respondent was criminally charged in Oregon with Assault in the Third Degree, a felony; Criminal Mistreatment in the First Degree, a felony; and Assault in the Fourth Degree Constituting Domestic Violence, a misdemeanor. *Exhibits ('Exs.') 1-3, 6, & 9-11; and Dec. of Sullivan: Pg. 1; Ln. 23-25.*
- 4.8. On May 30, 2017, the Respondent was arraigned on the three criminal charges. He plead 'Not Guilty'. *Ex. 4.*
- 4.9. On November 6, 2017, the Respondent entered into a 'deferred prosecution', meaning if he complies with the treatment conditions, the criminal matter against him will be dismissed at a later date. The Respondent's case is scheduled to be reviewed on November 5, 2018. *Exs. 5 & 8 and Dec. of Sullivan: Pg. 2; Ln. 1-2, 23 and Pg. 3; Ln. 11-13.*
- 4.10. On February 3, 2018, the Respondent filed his gambling license renewal. In the online application, the Respondent disclosed the three criminal charges, which are still pending. He apologized for not reporting the criminal matter earlier. However, he cited, "I thought I only had to report criminal history if I was charged [sic] with a crime not in the middle of it like I'm right now." *Ex. 8 and Dec. of Sullivan: Pg. 2; Ln. 4-12.*
- 4.11. Washington State Gambling Commission Special Agent Julie Sullivan conducted the investigation regarding the Respondent's renewal application for his Public Card Room Employee license. *Exs. 7 & 12 and Dec. of Sullivan: Pg. 2; Ln. 13-15.*
- 4.12. The Respondent did not notify, in writing, the Washington State Gambling Commission he had been criminally charged within 30 days of May 18, 2017. *Dec. of Sullivan; Pg. 3; L. 5-7.*
- 4.13. The Respondent did not disclose to the Gambling Commission he had been charged with three crimes until February 3, 2018, when he filed his online renewal application. *Dec. of Sullivan: Pg. 3; Ln. 8-10.*

- 4.14. Between May 17, 2017, when the Respondent was charged with three criminal violations of law, and February 3, 2018, when the Respondent filed his online application for renewal of his gambling license, he did not notify the Gambling Commission regarding his criminal charges.
- 4.15. The Respondent did not present any evidence calling into dispute any of the facts raised by the Board Staff, as alleged in their summary judgment motion and/or supporting exhibits or 'Declaration of Julie Sullivan.

5. CONCLUSIONS OF LAW

Based upon the facts above, the undersigned administrative law judge makes the following conclusions:

Jurisdiction

- 5.1. The Office of Administrative Hearings (OAH) has jurisdiction over the persons and subject matter of this case under Revised Code of Washington (RCW) 9.46.140(2)&(4), Washington Administrative Code (WAC) 230-17-025 and chapters 34.05 and 34.12 RCW.

Summary Judgment

- 5.2. "A motion for summary judgment may be granted and an order issued if the written record shows that here is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." WAC 10-08-135.
- 5.3. "Summary judgment is appropriate 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.' Civil Rule (CR) 56(c)." *American Legion Post #149 v. Washington State Dept. of Health*, 164 Wn.2d 570, 584, 192 P.3d 306 (2008).
- 5.4. Civil Rule 56(e) provides: "If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party."

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The Respondent/Licensee has not established any genuine issue of material fact regarding being charged with crimes relating to physical harm to another individual

- 5.5. Revised Code of Washington (RCW) 9.46.075(9) establishes the Gambling Commission may suspend or revoke a license of anyone who is subject to current prosecution or pending charges relating to crimes involving physical harm to individuals.
- 5.6. On July 20, 2018, the Washington State Gambling Commission Board Staff filed 'Commission Staff's Motion for Summary Judgment and Memorandum of Authorities'. The summary judgment motion included 12 exhibits along with the 'Declaration of Julie Sullivan'.
- 5.7. On August 9, 2018, the undersigned administrative law judge established a briefing schedule regarding the Board Staff's summary judgment motion. The briefing schedule directed the Respondent/Licensee to file a 'Response' to the Board Staff's Motion no later than Friday, August 9, 2018 by 5:00 p.m.
- 5.8. The Respondent/Licensee did not file a 'Response' by Friday, August 17, 2018. In fact, as of the date of this Order, the Respondent/Licensee has provided no written documentation, via affidavit, declaration, or pleading, contesting the facts as alleged by the Board Staff in its Motion for Summary Judgment.
- 5.9. Consistent with Civil Rule 59(e), due to the Respondent/Licensee's failure to provide a 'Response' to the Board Staff's Motion for Summary Judgment, it has failed to raise any genuine dispute of material fact in the present case.
- 5.10. Therefore, the undersigned administrative law judge finds no genuine issue of material fact in dispute regarding the Respondent being charged with crimes involving the physical harm to another individual.
- 5.11. No genuine issue of material fact exists establishing the Respondent, Bobie R. Hodges, is 'subject to current prosecution or pending charges' for three crimes involving 'physical harm', in violation of RCW 9.46.075(9). Since no genuine dispute of material fact has been established, the Washington State Gambling Commission Staff's Motion for Summary Judgment is **GRANTED**.

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The Respondent/Licensee has not established any genuine issue of material fact regarding notifying the Gambling Commission of criminal charges filed against him

- 5.12. Washington Administrative Code (WAC) 230-03-085 allows the Washington State Gambling Commission 'to deny, suspend, or revoke any application, license or permit, when the applicant, licensee, or anyone holding a substantial interest in the applicant's or licensee's business or organization:
- (8) Fails to provide us with any information required under commission rules within the time required, or, if the rule establishes no time limit, within thirty days after receiving a written request from us;...
- 5.13. WAC 230-06-085(1) 'Report criminal actions filed' requires: 'Licensees must report to us in writing within thirty days all criminal actions filed against the licensee;...'
- 5.14. On July 20, 2018, the Washington State Gambling Commission Board Staff filed 'Commission Staff's Motion for Summary Judgment and Memorandum of Authorities'. The summary judgment motion included 12 exhibits along with the 'Declaration of Julie Sullivan'.
- 5.15. On August 9, 2018, the undersigned administrative law judge established a briefing schedule regarding the Board Staff's summary judgment motion. The briefing schedule directed the Respondent/Licensee to file a 'Response' to the Board Staff's Motion no later than Friday, August 9, 2018 by 5:00 p.m.
- 5.16. The Respondent/Licensee did not file a 'Response' by Friday, August 17, 2018. In fact, as of the date of this Order, the Respondent/Licensee has provided no written documentation, via affidavit, declaration, or pleading, contesting the facts as alleged by the Board Staff in its Motion for Summary Judgment.
- 5.17. Consistent with Civil Rule 59(e), due to the Respondent/Licensee's failure to provide a 'Response' to the Board Staff's Motion for Summary Judgment, it has failed to raise any genuine dispute of material fact in the present case.
- 5.18. Therefore, the undersigned administrative law judge finds no genuine issue of material fact regarding the Respondent failing to report being charged with three crimes to the Gambling Commission, within 30 days, of being charged on May 17, 2017.
- 5.19. Based upon the above cited 'Findings of Fact', the Respondent has established no genuine issue of material fact disputing he failed to report to the Washington State Gambling Commission, in writing, within thirty days of May 18, 2017, that he had been charged with three criminal charges, in violation of WAC 230-06-085(1) and WAC 230-03085(8). Since no genuine dispute of material fact has been established, the Washington State Gambling Commission Staff's Motion for Summary Judgment is **GRANTED**.

Revocation of the Respondent's Gambling License

- 5.20. RCW 9.46.075(1), (8), and (9) establishes the Gambling Commission can suspend or revoke a licensee's license for failing to comply with the application statute and regulations pronounced under RCW 9.46 and WAC 230-03 and WAC 230-06, as well as failing to notify the Gambling Commission of being criminally charged within 30 days of being so charged. Finally, the burden is on a licensee to prove by 'clear and convincing evidence' he is qualified for licensure.
- 5.21. WAC 230-03-085(1), (7), and (8)(a) further allows the Gambling Commission to suspend or revoke a licensee's gaming license for failing to comply with applicable statutes and regulations, being subject to felony and/or misdemeanor charges and failing to report such charges to the Gambling Commission.
- 5.22. Finally, WAC 230-06-085(1) requires licensee to notify the Gambling Commission, in writing, within 30 days of being charged with a crime.
- 5.23. Since the Respondent has established no genuine dispute of material fact, the Gambling Commission Board Staff is entitled to judgment in its favor, as a matter of law. As a result, the Washington State Gambling Commission Board Staff's Motion for Summary Judgment is **GRANTED**
- 5.24. Therefore, the Respondent, Bobie R. Hodges' Public Card Room Employee License is **REVOKED**.
- 5.25. Based on the granting of the Board Staff's Summary Judgment Motion, the evidentiary hearing, scheduled for Wednesday, October 17, 2018, is **STRICKEN**.

6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

- 6.1. The Washington State Gambling Commission Board Staff's Motion for Summary Judgment is **GRANTED**.
- 6.2. No genuine dispute of material fact exists as to whether the Respondent, Bobie R. Hodges, is 'subject to current prosecution or pending charges' for three crimes involving 'physical harm', in violation of RCW 9.46.075(9). Since the Respondent has raised no genuine dispute of material fact, the Washington State Gambling Commission Board Staff is entitled to Summary Judgment as a matter of law. The Washington State Gambling Commission Staff's Motion for Summary Judgment is **GRANTED**.

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6.3. No genuine dispute of material fact exists establishing the Respondent, Bobie R. Hodges, failed to report to the Washington State Gambling Commission, in writing, within thirty days of May 18, 2017, that he had been charged with three criminal charges, in violation of WAC 230-06-085(1) and WAC 230-03085(8). Since the Respondent has raised no genuine dispute of material fact, the Washington State Gambling Commission Board Staff is entitled to Summary Judgment as a matter of law. The Washington State Gambling Commission Board Staff's Motion for Summary Judgment is **GRANTED**.

6.4. Since the Respondent has established no genuine dispute of material fact, the Washington State Gambling Commission Board Staff's allegations are established. Therefore, as a matter of law consistent with RCW 9.46.075(1), (8), and (9) and WAC 230-03-085(1),(7), and (8)(a) and WAC 230-06-085(1), the Respondent, Bobie R. Hodges' Public Card Room Employee License is **REVOKED**.

6.5. Based on the Gambling Commission Board Staff's Motion for Summary Judgment being granted, the in-person, evidentiary hearing scheduled for Wednesday, October 17, 2018 is **STRICKEN**.

SIGNED at Tacoma, Washington on the date of mailing.



TJ Martin
Administrative Law Judge
Office of Administrative Hearings

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PETITION FOR REVIEW

Any party to this proceeding may file a Petition for Review of this initial order. The written petition for review must be mailed to the Washington State Gambling Commission at:

Washington State Gambling Commission
PO Box 42400
Olympia, WA 98504

The petition for review must be received by the Commission within twenty (20) days from the date this initial order was mailed to the parties. A copy of the petition for review must be sent to all parties of record. The petition for review must specify the portions of the initial order with which the party disagrees, and must refer to the evidence in the record which supports the party's position. The other party's reply must be received at the address above, and served on all parties of record, within thirty (30) days from the date the petition for review was mailed.

Any party may file a cross appeal. Parties must file cross appeals with the Washington State Gambling Commission within ten days of the date the petition for review was filed with the Washington State Gambling Commission. Copies of the petition or cross appeal must be served on all other parties or their representatives at the time the petition or appeal is filed.

CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 06-2018-GMB-00057

I certify that true copies of this document were served from Tacoma, Washington via Consolidated Mail Services upon the following as indicated:

<p>Bobie R. Hodges PO Box 343 Rainier, OR 97048 Respondent</p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Gregory J. Rosen, AAG Office of The Attorney General 1125 Washington St SE MS: 40100 PO Box 40100 Olympia, WA 98504-0100 Agency Representative</p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input checked="" type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Haylee Mills, Staff Attorney Gambling Commission MS: 42400 PO Box 42400 Olympia, WA 98504-2400 Agency Contact</p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input checked="" type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>

Date: Tuesday, September 11, 2018

OFFICE OF ADMINISTRATIVE HEARINGS

Hailey Miles

Hailey Miles
 Legal Assistant 2

